

jurisdictions, institutions, transactions, and accounts, can more effectively monitor the respective institutions, transactions, and accounts, and can protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

A. Required Consultations, and Statutory Factors To Consider, Prior to Designating a Primary Money Laundering Concern

Prior to making a finding that a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) is a primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, the Secretary is required by the statute to consider "such information as the Secretary determines to be relevant," including the following "potentially relevant [jurisdictional] factors":

- Evidence that organized criminal groups, international terrorists, or both, have transacted business in the jurisdiction;
- The extent to which the jurisdiction or financial institutions operating in the jurisdiction offer bank secrecy or special regulatory advantages to non-residents or non-domiciliaries of the jurisdiction;
- The substance and quality of administration of the bank supervisory and counter-money laundering laws of the jurisdiction;
- The relationship between the volume of financial transactions occurring in the jurisdiction and the size of the economy of the jurisdiction;
- The extent to which the jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;
- Whether the United States has a mutual legal assistance treaty with the jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and
- The extent to which the jurisdiction is characterized by high levels of official or institutional corruption.

Once the Secretary, after having consulted with the Secretary of State and the Attorney General and having considered the factors set forth immediately above, has made a finding that reasonable grounds exist for concluding that a jurisdiction, etc., is a primary money laundering concern, one or more of the five statutorily permitted

"special measures" may be imposed following the appropriate consultations as described below.²

B. Special Measures

There are five specific "special measures" that can be imposed, either individually, jointly, or in any combination:

1. Recordkeeping and Reporting of Certain Financial Transactions

The Secretary may require domestic financial institutions and domestic financial agencies to maintain and/or to file reports concerning the aggregate amount of transactions or the specifics of each transaction with the primary money laundering concern. The records and reports shall include whatever information the Secretary deems to be relevant, including, but not limited to:

- The identity and address of the participants in a transaction or relationship;
- The legal capacity in which the participant is acting;
- The identity of the beneficial owner of the funds involved; and
- A description of the transaction.

2. Information Relating to Beneficial Ownership

The Secretary may require domestic financial institutions and domestic financial agencies "to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market)" involving the primary money laundering concern.

3. Information Relating to Certain Payable-Through Accounts

The Secretary may require domestic financial institutions and domestic financial agencies that open or maintain a payable-through account in the United States involving the primary money laundering concern to: (1) Identify each customer (and representative) who is permitted to use the account or whose transactions are routed through the account; and (2) obtain information about each such customer (and representative) that is substantially comparable to that which a U.S. depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

² For the purposes of this action, the required consultation was performed at the staff level.

4. Information Relating to Certain Correspondent Accounts

The Secretary can require domestic financial institutions and domestic financial agencies that open or maintain a correspondent account in the United States involving the primary money laundering concern to: (1) Identify each customer (and representative) who is permitted to use the account or whose transactions are routed through the account; and (2) obtain information about each such customer (and representative) that is substantially comparable to that which a U.S. depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

5. Prohibitions or Conditions on Opening or Maintaining Certain Correspondent or Payable-Through Accounts

The Secretary, after the respective consultations, can prohibit, or can impose conditions on, domestic financial institutions and financial agencies opening or maintaining in the United States any correspondent account or payable-through account for or on behalf of a foreign financial institution if the account involves the primary money laundering concern.

C. Additional Required Consultations, and Statutory Factors To Be Considered, in Advance of Imposing Any of the Special Measures

Prior to determining which special measure(s) to impose, the Secretary must consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate."

In determining generally which special measures to select and to impose, the Secretary, in consultation with the agencies and "interested parties" set forth above, must consider the following factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;